

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

* * *

Blanton Banks, II,

Case No. 2:21-cv-01580-APG-DJA

Plaintiff,

Order

V.

Trans Union, et al.,

Defendants.

Plaintiff is proceeding *pro se* under 28 U.S.C. § 1915 and has requested authority to proceed *in forma pauperis*. (ECF No. 6). Plaintiff also submitted a complaint. (ECF No. 1-1). Plaintiff has moved to submit an audio file to the Court. (ECF No. 4).

I. *In forma pauperis* application.

Plaintiff has filed the application required by § 1915(a). (ECF No. 6). Plaintiff has shown an inability to prepay fees and costs or to give security for them. Accordingly, the request to proceed *in forma pauperis* will be granted pursuant to 28 U.S.C. § 1915(a). The Court will now review Plaintiff's complaint.

II. Screening the complaint.

Upon granting an application to proceed *in forma pauperis*, courts additionally screen the complaint under § 1915(e). Federal courts are given the authority to dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). When a court dismisses a complaint under § 1915, the plaintiff should be given leave to amend the complaint with directions as to curing its deficiencies, unless it is clear from the face of the complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

1 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a
2 complaint for failure to state a claim upon which relief can be granted. Review under Rule
3 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of Am.*, 232 F.3d
4 719, 723 (9th Cir. 2000). A properly pled complaint must provide a short and plain statement of
5 the claim showing that the pleader is entitled to relief. Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp.*
6 *v. Twombly*, 550 U.S. 544, 555 (2007). Although Rule 8 does not require detailed factual
7 allegations, it demands “more than labels and conclusions” or a “formulaic recitation of the
8 elements of a cause of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The court must
9 accept as true all well-pled factual allegations contained in the complaint, but the same
10 requirement does not apply to legal conclusions. *Iqbal*, 556 U.S. at 679. Mere recitals of the
11 elements of a cause of action, supported only by conclusory allegations, do not suffice. *Id.* at
12 678. Secondly, where the claims in the complaint have not crossed the line from conceivable to
13 plausible, the complaint should be dismissed. *Twombly*, 550 U.S. at 570. Allegations of a *pro se*
14 complaint are held to less stringent standards than formal pleadings drafted by lawyers. *Hebbe v.*
15 *Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (finding that liberal construction of *pro se*
16 pleadings is required after *Twombly* and *Iqbal*).

17 Federal courts are courts of limited jurisdiction and possess only that power authorized by
18 the Constitution and statute. *See Rasul v. Bush*, 542 U.S. 466, 489 (2004). Pursuant to 28 U.S.C.
19 § 1331, federal courts have original jurisdiction over “all civil actions arising under the
20 Constitution, laws, or treaties of the United States.” Cases “arise under” federal law either when
21 federal law creates the cause of action or where the vindication of a right under state law
22 necessarily turns on the construction of federal law. *Republican Party of Guam v. Gutierrez*, 277
23 F.3d 1086, 1088-89 (9th Cir. 2002). Whether federal-question jurisdiction exists is based on the
24 “well-pleaded complaint rule,” which provides that “federal jurisdiction exists only when a
25 federal question is presented on the face of the plaintiff’s properly pleaded complaint.”
26 *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987). Here, Plaintiff alleges violations of the
27 Fair Credit Reporting Act, the Fair Debt Collection Practices Act, the Truth in Lending Act, the
28 Privacy Act, and the Freedom of Information Act against Defendants related to charges he

1 disputes on his credit reports. Plaintiff claims that he sent credit reporting agencies and debt
 2 holders debt validation letters, to which he alleges the companies responded inadequately.

3 **A. *Fair Credit Reporting Act.***

4 Under Section 1681i of the Fair Credit Reporting Act (FCRA),

5 if the completeness or accuracy of any item of information contained
 6 in a consumer's file at a consumer reporting agency is disputed by
 7 the consumer and the consumer notifies the agency directly, or
 8 indirectly through a reseller, of such a dispute, the agency shall, free
 9 of charge, conduct a reasonable reinvestigation to determine
 10 whether the disputed information is inaccurate and record the
 11 current status of the disputed information, or delete the item from
 12 the file in accordance with paragraph (5), before the end of the 30-
 13 day period beginning on the date on which the agency receives the
 14 notice of the dispute from the consumer or reseller. 15 U.S.C.A.
 15 § 1681i(a)(1)(A).

16 In addition to the required reinvestigation, a consumer reporting agency ("CRA") has a
 17 duty to promptly notify the entity or individual who provided the information that such
 18 information has been disputed before the expiration of the 5-business-day period that begins on
 19 the date the CRA received notice of the dispute. 15 U.S.C.A. § 1681i(a)(2)(A). A CRA may
 20 terminate a reinvestigation if it reasonably determines that the dispute is frivolous or irrelevant.
 21 15 U.S.C.A. § 1681i(a)(3)(A). However, if the reinvestigation reveals that the disputed
 22 information is in fact inaccurate or incomplete or cannot be verified, the CRA shall promptly
 23 delete that item of information from the file and promptly notify the furnisher of that information.
 24 15 U.S.C.A. § 1681i(a)(5)(A)(i)-(ii). The Ninth Circuit has held "that a plaintiff filing suit under
 25 [§] 1681i must make a 'prima facie showing of inaccurate reporting.'" *Carvalho v. Equifax Info.*
 26 ~~Servs., LLC~~, 629 F.3d 876, 890 (9th Cir. 2010).

27 Plaintiff does not identify the section of the FCRA under which he brings his claims.
 28 However, the Court liberally construes Plaintiff as asserting violations of 15 U.S.C.A. § 1681i(a).
 Plaintiff brings his claim against TransUnion, Equifax, and Experian. Collectively, the Court
 refers to these Defendants as the "Credit Reporting Defendants."

29 Plaintiff asserts that he sent debt validation letters to the Credit Reporting Defendants on
 30 July 8, 2020. (ECF No. 6 at 3-6). Plaintiff alleges that TransUnion and Experian responded to

1 his requests late, constituting a violation of the FCRA. *See id.* Plaintiff's claims under 15
 2 U.S.C.A. § 1681i(a)(1)(A) will thus proceed against TransUnion and Experian.

3 Plaintiff has also made a prima facie showing of inaccurate reporting as it relates to
 4 TransUnion's reporting of an account with Aargon Agency. *See id.* He alleges that, even though
 5 he informed TransUnion that he had received a letter from Aargon Agency informing Plaintiff
 6 that he had no account with Aargon, TransUnion continued to consider Aargon Agency a valid
 7 account. *See id.* Plaintiff's claim under 15 U.S.C.A. § 1681i(a)(5)(A)(i)-(ii) will proceed against
 8 TransUnion.

9 Plaintiff has not made a prima facie showing of inaccurate reporting by Experian. While
 10 he claims that Experian did not conduct a reasonable investigation, he provides no specific
 11 allegations about which accounts he believes are inaccurate. Because Plaintiff does not allege a
 12 prima facie showing of inaccurate reporting, his claim under 15 U.S.C.A. § 1681i(a)(5)(A)(i)-(ii)
 13 as alleged against Experian is dismissed without prejudice.

14 However, Plaintiff alleges that Equifax timely responded. *See id.* Although Plaintiff
 15 asserts that Equifax failed to conduct an actual or reasonable investigation into his disputes, he
 16 does not explain why other than stating that the disputed accounts remained on his credit report.
 17 *See id.* For the purposes of screening, Plaintiff has not made prima facie showing of inaccurate
 18 reporting against Equifax. Thus, Plaintiff's FCRA claim against Equifax is dismissed without
 19 prejudice.

20 ***B. Fair Debt Collection Practices Act***

21 Plaintiff alleges that Defendants Capital One Bank USA N; Client Services, INC.; First
 22 Premier Bank; Assert Recovery Solutions, LLC; Ad Astra Recovery Services, INC.; Wells Fargo
 23 Bank; U.S. Auto Credit Purchasing Center, LLC; I.Q. Data International, INC.; TBOM/Total
 24 Card; KAPS & CO. USA, LLC; I.C. System, INC.; Aargon Agency, INC.; and Portfolio
 25 Recovery Associates, LLC each violated the Fair Debt Collection Practices Act (FDCPA).
 26 Collectively, the Court refers to these Defendants as the "Furnishing Defendants."

27 Plaintiff asserts that he was forced to contact the Furnishing Defendants directly after
 28 receiving what he alleges were inadequate and late responses to his debt validation letters from

1 the Credit Reporting Defendants. Plaintiff does not explain under which provision of the FDCPA
 2 he brings his claims, but the Court liberally construes his complaint as asserting claims under 16
 3 U.S.C. § 1692g, requiring debt collectors to validate debts. Under the FDCPA, a debt collector is
 4 defined as any person who uses “any instrumentality of interstate commerce or the mails in any
 5 business the principal purpose of which is the collection of any debts, or who regularly collects or
 6 attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due
 7 another.” 16 U.S.C. § 1692a(6). Within five days after the initial communication with a
 8 consumer in connection with a debt, a debt collector shall send the consumer a written notice
 9 containing certain information about the debt. *See* 15 U.S.C. § 1692g(a). The consumer has
 10 thirty days after receiving this notice to dispute the validity of a debt, after which the debt
 11 collector must cease collection until the collector provides verification of the debt to the
 12 consumer. 15 U.S.C. § 1692g(b).

13 Here, Plaintiff asserts that he sent letters to each of the Furnishing Defendants on
 14 December 12, 2020 asking each to verify the debts he disputed on his credit reports. The Court
 15 liberally construes Plaintiff’s complaint as asserting that each of the Furnishing Defendants acted
 16 as a debt collector under the FDCPA. However, Plaintiff has not alleged whether and when he
 17 received written notice from each of these Defendants under 15 U.S.C. § 1692g(a). This notice
 18 begins the clock within which Plaintiff must dispute the validity of each debt. Without
 19 allegations whether Defendants did not provide these notices—or, if they did, when—Plaintiff
 20 does not allege a colorable claim against the Furnishing Defendants. Plaintiff’s FDCPA claims
 21 against Capital One Bank USA N; Client Services, INC.; First Premier Bank; Assert Recovery
 22 Solutions, LLC; Ad Astra Recovery Services, INC.; Wells Fargo Bank; U.S. Auto Credit
 23 Purchasing Center, LLC; I.Q. Data International, INC.; TBOM/Total Card; KAPS & CO. USA,
 24 LLC; I.C. System, INC.; Aargon Agency, INC.; and Portfolio Recovery Associates, LLC are thus
 25 dismissed without prejudice.

26 ***C. Truth in Lending Act.***

27 “As a comprehensive consumer protection statute, TILA seeks to protect consumers by
 28 requiring certain disclosures to consumers for certain types of loans.” *Amonette v. IndyMac*

1 *Bank, F.S.B.*, 515 F. Supp. 2d 1176, 1181 (D. Haw. 2007). TILA seeks “to protect consumers’
 2 choice through full disclosure and to guard against the divergent and at times fraudulent practices
 3 stemming from uninformed use of credit.” *King v. California*, 784 F.2d 910, 915 (9th Cir. 1986)
 4 (citing *Mourning v. Family Publ’ns Serv., Inc.*, 411 U.S. 356, 363–64 (1973)). Under TILA, a
 5 borrower may rescind certain loans for up to three years after the parties consummate the
 6 transaction. *See Fareed Sepehry-Fard v. U.S. Bank National Ass’n*, No. 18-cv-03885-BLF, 2018
 7 WL 5099287 at *2 (N.D. Cal. Aug. 7, 2018) (citing *Jesinoski v. Countrywide Home Loans, Inc.*,
 8 135 S. Ct. 790, 791 (2015)). The borrower’s right to rescind depends in part on whether the
 9 creditor has provided the TILA’s required disclosures. *See id.*; *see* 15 U.S.C.A. § 1638(a).
 10 Actions brought under TILA for rescission have a three-year statute of limitations. *See Fareed*
 11 *Sepehry-Fard*, 2018 WL 5099287, at *3.

12 Plaintiff asserts that Wells Fargo violated the TILA by failing to “explain to the plaintiff
 13 how the money he provided and used to open a secured credit card has hurt Wells Fargo in any
 14 way.” *Id.* at 12. Plaintiff seems to assert that he has an account with Wells Fargo on which he
 15 does not owe any debts. *See id.* He claims that Wells Fargo’s response to his debt validation
 16 letter did not disclose material facts and thus violated the Truth in Lending Act. *See id.* But
 17 Plaintiff has not explained that Wells Fargo failed to disclose any of the statutorily required
 18 material disclosures, only that it did not explain how Plaintiff has hurt Wells Fargo by opening an
 19 account. Nor has he alleged the date on which he opened the account, which would impact the
 20 three-year statute of limitations under the TILA. Because Plaintiff has not alleged that Wells
 21 Fargo violated the TILA, the Court dismisses this claim against Wells Fargo without prejudice.

22 **D. *Privacy Act***

23 The Privacy Act provides a private cause of action against federal agencies for violating
 24 the Act’s provisions. *Doe v. Chao*, 540 U.S. 614, 618, (2004); 5 U.S.C. § 552a(g)(1). The
 25 Privacy Act prohibits, with certain exceptions, the disclosure by an agency of “any record which
 26 is contained within a system of records” without the prior written consent of the individual to
 27 whom the record pertains. 5 U.S.C. § 552a(b). Claims under the act must be brought within two
 28 years from the date on which the cause of action arises or after the plaintiff discovers that an

1 agency has misrepresented information. 5 U.S.C. § 52a(g)(5). Credit reporting agencies are
 2 private businesses. *See CFPB to Supervise Credit Reporting*, Consumer Financial Protection
 3 Bureau, <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-to-supervise-credit-reporting/> (July 16, 2012).

5 Plaintiff claims that First Premier violated the Privacy Act because they “sent plaintiff
 6 documents showing that they were invading plaintiff’s privacy by getting his credit report without
 7 his permission.” *Id.* at 9. Plaintiff attaches an exhibit he believes proves that First Premier
 8 obtained his data without permission which shows Plaintiff’s FICO score that First Premier
 9 obtained on July 15, 2016. (ECF No. 1-4 at 105). However, Plaintiff has not asserted his claim
 10 against any federal agency, but a private agency. Nor does he allege that he did not authorize
 11 First Premier to obtain his credit score in 2016 or that First Premier misrepresented any
 12 information to toll the statute of limitations. Plaintiff also could not amend his complaint to assert
 13 this claim against any of his listed Defendants because none of them—including the Credit
 14 Reporting Defendants—are government agencies. However, because Plaintiff could potentially
 15 amend his complaint to add government agencies to the extent he believes he can state a claim,
 16 the Court dismisses his Privacy Act claim without prejudice.

17 ***E. Freedom of Information Act***

18 To state a claim under the Freedom of Information Act (FOIA), a plaintiff must allege
 19 that: (1) he made a written request for the records, 5 U.S.C. § 552(a)(3)(A); (2) the requested
 20 records were created or obtained by a federal agency; and (3) the agency denied the request and
 21 any subsequent administrative appeal or failed to comply by providing the agency records within
 22 the twenty-day statutory time period. *See in re Steele*, 799 F.2d 461, 465-66 (9th Cir. 1986); 5
 23 U.S.C. § 552(a)(6)(C). The twenty-day time period begins to run upon the agency’s receipt of the
 24 request. 5 U.S.C. § 552(a)(6)(A)(i).

25 Here, Plaintiff asserts that TransUnion violated the Freedom of Information Act when it
 26 refused to provide him a copy of the November 19, 2020 phone call Plaintiff had with a
 27 TransUnion representative. *See id.* at 4. However, TransUnion is not a federal agency and is thus
 28 not bound by the disclosure requirements under FOIA. None of the Defendants are. However,

1 because Plaintiff could potentially amend his complaint to add federal agency defendants to the
2 extent he believes he can state a claim, the Court dismisses his FOIA claim without prejudice.

3 **III. Motion to file audio file.**

4 Plaintiff moves to file an audio file manually. (ECF No. 4). Because the Clerk's office
5 has already received a copy of Plaintiff's flash drive containing this audio file, the Court denies
6 Plaintiff's motion as moot. The Court directs Plaintiff to Local Rule IC 1-1(d), which provides
7 that manual filings need only be accompanied by a notice, rather than a motion.

8

9 **IT IS THEREFORE ORDERED** that Plaintiff's application to proceed *in forma*
10 *pauperis* (ECF No. 6) is **granted**.

11 **IT IS FURTHER ORDERED** that Plaintiff's Fair Credit Reporting Act claims will
12 proceed against Defendants TransUnion, LLC; and Experian Information Solutions, INC as
13 explained in this Order.

14 **IT IS FURTHER ORDERED** that:

15 • Plaintiff's Fair Credit Reporting Act claims are dismissed without prejudice as
16 alleged against Defendant Equifax Information Services, LLC.

17 • Plaintiff's Fair Debt Collection Practices Act claims are dismissed without
18 prejudice.

19 • Plaintiff's Privacy Act claim is dismissed without prejudice.

20 • Plaintiff's Freedom of Information Act claim is dismissed without prejudice.

21 **IT IS FURTHER ORDERED** that the Clerk of Court is kindly directed to file Plaintiff's
22 complaint (ECF No. 6-1). The Clerk of Court is also kindly directed to issue summonses to
23 Defendants: (1) TransUnion, LLC; and (2) Experian Information Solutions, LLC.

24 **IT IS FURTHER ORDERED** that Plaintiff shall have **90 days—until Wednesday,**
25 **February 2, 2022**—within which to serve the Defendants against whom Plaintiff's claims are
26 proceeding. Fed. R. Civ. P. 4(m).

27

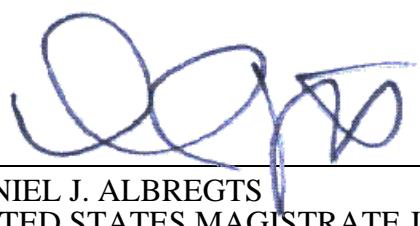
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1 **IT IS FURTHER ORDERED** that Plaintiff will have twenty-one days—until **Monday,**
2 **November 29, 2021**¹—to file an amended complaint to the extent he believes he can correct the
3 noted deficiencies. If Plaintiff chooses to amend the complaint, Plaintiff is informed that the
4 Court cannot refer to a prior pleading (i.e., the original complaint) to make the amended
5 complaint complete. This is because, generally, an amended complaint supersedes the original
6 complaint. Local Rule 15-1(a) requires that an amended complaint be complete without reference
7 to any prior pleading. Once a plaintiff files an amended complaint, the original complaint no
8 longer serves any function in the case. Therefore, in an amended complaint, as in an original
9 complaint, each claim and the involvement of each Defendant must be sufficiently alleged.

10 **IT IS FURTHER ORDERED** that from this point forward, Plaintiff shall serve upon
11 Defendants, or, if appearance has been entered by counsel, upon the attorney(s), a copy of every
12 pleading, motion, or other document submitted for consideration by the Court. Plaintiff shall
13 include with the original papers submitted for filing a certificate stating the date that a true and
14 correct copy of the document was mailed to Defendants or counsel for Defendants. The Court
15 may disregard any paper received by a District Judge or Magistrate Judge that has not been filed
16 with the Clerk, and any paper received by a District Judge, Magistrate Judge, or the Clerk that
17 fails to include a certificate of service.

18 **IT IS FURTHER ORDERED** that Plaintiff's motion for leave to file audio file (ECF
19 No. 4) is **denied as moot.**

20
21 DATED: November 4, 2021
22
23

24 
25 DANIEL J. ALBREGTS
26 UNITED STATES MAGISTRATE JUDGE
27

28 ¹ Because this deadline lands on a Court holiday, it is moved to the next business day.